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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/811,615

03/29/2004

Michael Wayne Crosby

0014

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GO DADDY GROUP, INC.
14455 NORTH HAYDEN ROAD
SUITE 219
SCOTTSDALE, AZ 85260

EXAMINER

THOMPSON, MICHAEL M

ART UNIT

PAPER NUMBER

3629

NOTIFICATION DATE

DELIVERY MODE

11/12/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

inventions@godaddy.com

Office Action Summary	Application No. 10/811,615	Applicant(s) CROSBY ET AL.	
	Examiner Michael M. Thompson	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01-23-2009</u> . | 6) <input type="checkbox"/> Other: _____ |

Requirement for Information under 37 CFR 1.105

1. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.
2. In response to this requirement please provide information as to disclosure of the inventor's information over the web specifically associated with the web site www.godaddy.com. The examiner, upon conducting a search, has found evidence that the invention was disclosed on the internet and existed as early as of October 2002 (included in PTO-892), and included several features allowing for website creation through the use of templates and web site hosting wherein "Web Site Complete v. 5.0." allows for facilitating and assisting in web site creation. In particular, applicant should disclose any or all information related to the Web Site Complete software suite. Since the archived website is associated with Go Daddy and appears to have prior versions, this request should also be construed to include any information with respect to prior versions that may be construed as prior art by the Examiner.
7. In response to this requirement, please state whether any search of prior art was performed. If a search was performed, please state the citation for each prior art collection searched. If any art retrieved from the search was considered material to demonstrating the knowledge of a person having ordinary skill in the art to the disclosed invention, please provide the citation for each piece of art considered and a copy of the art.

Art Unit: 3629

8. In response to this requirement, please provide the names of any products or services that have incorporated the claimed subject matter. Upon Examiner's initial search it appears that the Web Site Complete v. 5.0 and previous versions have been provided prior to Applicant's filing. Further, if the invention has been for public use in other published software or software agreements with companies that may be pertinent prior art.

9. The information is required to document the level of skill and knowledge in the art of "web site" creation and software development as it relates to "hosting" and creation of web sites through templates.

10. The information is required to identify products and services embodying the disclosed subject matter of "web site" creation and software development as it relates to "hosting" and creation of web sites through templates" and identify the properties of similar products and services found in the prior art.

11. The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of the requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97 where appropriate.

Art Unit: 3629

12. In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated in the requirement, or where such subject matter is not indicated, the subject matter found in applicant's disclosure. In response to this requirement, please provide a list of keywords that are particularly helpful in locating publications related to the disclosed art of cross purchase.

13. The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete reply to the requirement for that item.

14. This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 1-12 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

The first step in determining whether a claim recites patent eligible subject matter is to determine whether the claim falls within one of the four statutory categories of invention recited in 35 USC 101: process, machine, manufacture and composition of matter. The latter three categories define "things" or "products", while a "process" consists of a series of steps or acts to be performed. For purposes of 101, the analysis of a process is guided by the machine-or-transformation test. *In re Bilski*, ___ F.3d ___ (Fed. Cir. 2008)(en banc).

Based on Supreme Court precedent (*Diamond v Diehr*, 450 U.S. 175,184 (1981); *Parker v. Flook*, 437 US 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) and recent precedent from the Federal Circuit from *In re Bilski*, the machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. See *Benson*, 409 U.S. at 70. Certain considerations are applicable to analysis under either branch. First, as illustrated by *Benson*, *the use of a specific machine or transformation of an article must impose meaningful limits on the*

Art Unit: 3629

claim's scope to impart patent-eligibility. See Benson, 409 U.S. at 71-72. Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity. See Flook, 437 U.S. at 590. If neither of these requirements is met by the claim, the method is not a patent eligible process under 35 U.S.C. 101.

Claims 1-12 and 19 are drawn to **a method for a Facilitator to assist an Entrepreneur in creating an Internet Business**. All of the recited method steps can be performed by the user themselves, in the mind of the user or between different users through writing by a user or to other user's, while the potential for an implied technology does not place meaningful limitations of the claim's scope. Given the broadest meaningful interpretation, the scope of Applicant's claims appear to be directed to the creation of a web site and assisting the Entrepreneur in designing the web site. These limitations could conceivably be derived through collaboration as stated above, while any implied machine merely loads the *created product* and does not place meaningful limits on the creation nor assists in the design of the web site. (i.e. creation and assistance may be on paper by a person). Furthermore, any involvement of an implied machine is insignificant, in as much as, the steps of creation and assistance is involved since the loading of the created product by an implied machine is merely a conduit upload and/or to eventually display the code. Therefore, the limitations of claims 1, 7, and 19 appear to involve a machine merely for insignificant extra-solution activity. In conclusion, these method steps are not adequately tied to a particular machine nor do they transform an article. In the least, to qualify as a statutory process, the claim should

Art Unit: 3629

positively recite in the body of the claim, the particular machine to which it is tied and should impose a meaningful limit on the claim's scope. Furthermore, the machine must not be involved in an insignificant way as to be characterized as extra-solution activity.

Please note that ***nominal or insignificant recitations of a machine in an otherwise ineligible method fail to make the method a statutory process.*** See Benson, 409 U.S. at 70 -72. As Comiskey recognized, "the mere use of the machine to collect data necessary for application of the mental process may not make the claim patentable subject matter." Comiskey, 499 F.3d at 1380 (citing *In re Grams*, 888 F.2d 835, 839-40 (Fed. Cir. 1989)). Incidental physical limitations, such as data gathering, field of use limitations, storing, collecting, sending, receiving, displaying, and other forms of insignificant extra solution activity are not enough to convert an abstract idea into a statutory process. In other words, nominal or token recitations of involvement of a machine or transformation in a method claim do not convert an otherwise ineligible claim into an eligible one. *Ex parte Langemyr* (2008) and *In re Bilski*, (Fed. Cir. 2008).

Therefore, the applicable test to determine whether a claim is drawn to a patent-eligible process under § 101 is the machine-or-transformation test set forth by the Supreme Court and clarified herein, and Applicants' claim here appears to fail this test. No new matter should be added.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-12 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohen (US 6,263,352).

5. **With respect to claims 1, 7 and 19,** Cohen teaches a method for a Facilitator to assist an Entrepreneur in creating an Internet business, comprising the steps of: creating a Facilitator's web site on the Internet accessible to Entrepreneurs (i.e. shown in Figure 4 and the description of Figure 1 as to the general role of the Page Generation System to include Figure 3, at least under the second scenario if not the first, as an overall "Facilitator's web site); receiving information regarding an Entrepreneur that has accessed the Facilitator's web site (i.e. shown in col.6 at least the proposition that access of the Facilitator occurs and information is received when sent by the merchant using its services); storing the information regarding the Entrepreneur in a memory location accessible by the Facilitator's web site (i.e. shown at least in col. 6 for the proposition that the information sent and received is stored at the ISP computer in the builder module or the stored data file 126); assisting an Entrepreneur on the Facilitator's web site in designing an Entrepreneur's web site by providing web site design services using at least some of the stored information regarding the Entrepreneur (i.e. shown at least at col. 6 when the Entrepreneur's/merchant's web site is assisted in design by the

Art Unit: 3629

ISP merchant computer using the builder module and in the descriptions of Figures 5 and 6 discussing the Store Builder Wizard or SBW); and assisting the Entrepreneur on the Facilitator's web site in designing a store front web site,; designing the Entrepreneur's web site and store front web site using the same template(i.e. this can be shown from the SBW's assists the merchant through a series of templates by the input of information into the store builder module providing the ability to create a store front web site from the same template through the use of the active server templates or AST's and the active server pages or ASP's as described in Figures 5-8, col. 7 and 8. Similarly, it may be argued that the templates themselves produce "the same" templates. In fact, the purpose of a template, as in Cohen and Applicant's invention is for the explicit purpose of providing the same template to assist and Entrepreneur in web site design).

6. **With respect to claims 2 and 8**, Cohen teaches the method of claim 1 and 7 respectively, wherein the Entrepreneur's web site and the store front web site have navigational bars located in the same location. (i.e. the Entrepreneur's/merchant's web site created in the stored data file/AST's on the ISP computer is going to contain the hypertext language and scripting language of the merchant's web site. This language or AST comprised of the Entrepreneur/merchant data in the data file and templates which are the same and comprise the Entrepreneur or merchant's web site, were they are identical to the ASP executed on the store front generated web site and will therefore contain substantially similar features throughout. Furthermore, as to the limitation of navigational bars, the specific type of web site feature (i.e. navigation bars) are deemed

Art Unit: 3629

to be nonfunctional descriptive material and are not functionally involved in the steps recited. The creating, receiving, storing and assisting steps would be performed the same regardless of what type of web site feature is being created. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

7. **With respect to claims 3 and 9**, Cohen teaches the method of claim 1 and 7 respectively, wherein the Entrepreneur's web site and the store front web site have logos located in the same locations. As per claims 3 and 9, while the particular feature may address logos, these claims are rejected under a similar rationale as applied to claims 2 and 8 supra. Furthermore, as to the limitation pertaining to the logos, this specific type of web site feature (i.e. logos) are deemed to be nonfunctional descriptive material and are not functionally involved in the steps recited. The creating, receiving, storing and assisting steps would be performed the same regardless of what type of web site feature is being created. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

8. **With respect to claims 4 and 10**, Cohen teaches the method of claim 1 and 7 respectively, wherein the Entrepreneur's web site and the store front web site have graphical images located in the same locations. As per claims 4 and 10, while the

Art Unit: 3629

particular feature may address graphical images, these claims are rejected under a similar rationale as applied to claims 2 and 8 supra. Furthermore, as to the limitation of graphical images, the specific type of web site feature (i.e. graphical images) are deemed to be nonfunctional descriptive material and are not functionally involved in the steps recited. The creating, receiving, storing and assisting steps would be performed the same regardless of what type of web site feature is being created. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

9. **With respect to claims 5 and 11**, Cohen teaches the method of claim 1 and 7 respectively, wherein the Entrepreneur's web site and the store front web site have similar textual content located in the same locations (i.e. col. 5 code addressing text). As per claims 5 and 11, while the particular feature may address textual content, these claims are rejected under a similar rationale as applied to claims 2 and 8 supra. Furthermore, as to the limitation of textual content, the specific type of web site feature (i.e. textual content) are deemed to be nonfunctional descriptive material and are not functionally involved in the steps recited. The creating, receiving, storing and assisting steps would be performed the same regardless of what type of web site feature is being created. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ

Art Unit: 3629

401, 404 (Fed.Cir.1983); In re Lowry, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

10. **With respect to claims 6 and 12**, Cohen teaches the method of claim 1 and 7 respectively, wherein the Entrepreneur's web site and the store front web site include a the same color scheme (i.e. Figure 8 deals with style and color; col. 5 in the code). As per claims 6 and 12, while the particular feature may address color schemes, these claims are rejected under a similar rationale as applied to claims 2 and 8 supra.

Furthermore, as to the limitation of a color scheme, the specific type of web site feature (i.e. color schemes) are deemed to be nonfunctional descriptive material and are not functionally involved in the steps recited. The creating, receiving, storing and assisting steps would be performed the same regardless of what type of web site feature is being created. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); In re Lowry, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

11. **Claims 1-12 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Go Daddy Software: WebSite Complete v5.0**

(http://web.archive.org/web/20021210150241/www.godaddy.com/gdshop/websitecomplete.asp?isc=&se=+&from_app=) (hereinafter "Go Daddy").

12. **With respect to claims 1-12 and 19**, Go Daddy teaches the use of web site design software that provides the ability to design and Entrepreneur's web site store front.

Response to Arguments

13. Applicant's arguments with respect to claims 1-12 and 19 have been considered but are moot in view of the new ground(s) of rejection.

14. With respect to the rejections under 35 U.S.C. 101, it is the Examiner's position that the "Internet" may not be considered a particular machine. In the vernacular and within the context of Applicant's sentence structure, given the broadest reasonable interpretation Internet may refer to signals or a transmission. The creation of a web site on the internet as in an "information highway." Assuming, arguendo, that Applicant is correct as to the interpretation of "Internet" as described in the arguments as "the Internet" being a "particular machine" it is still the Examiner's position that Applicant fails the second prong of analysis. In particular, as recited in the previous office action, the second prong requires that the user of the particular machine impose a meaningful limit on the claim's scope (i.e. does it involve more than a field of use limitation?) **and** further requires that the use of the machine involved be more than insignificant extra-solution activity. As to the first prong, Applicant's reliance on the "Internet" is merely a field of use limitation and is not central to the purpose of the method invented by the Applicant since the act of creating the web site or designing the web site is not executed by the Internet. In short, the Internet is not responsible for the creation or designing of the web site. For these reasons Applicant's claims fail the second prong of analysis as well since Applicant's use of the internet is merely extra-solution activity. In short, any involvement of an implied machine is insignificant, in as much as the steps of creation

Art Unit: 3629

and designing of the web site are concerned. Therefore, reliance upon and involvement of the internet is merely for the loading of the created product and merely as a conduit to upload and/or to eventually display the code in the form of a web site which falls squarely within the realm of extra-solution activity as described in Bilski.

15. With respect to the prior art, it should be noted that the use of a "generic template" from the Facilitator's web site in web site design is necessarily included in the design of the Entrepreneur's web site. Further, as is the case with both prior art citations and rejections, the design of a website with the Facilitator's web site (i.e. Go Daddy or Cohen's design services) is for use in the design of the store front of the Entrepreneur by use of the templates provided. Furthermore, as a matter of website design publishing when web sites are created it can be stored at one location such as the case with the prior art for hosting. The store front domain that is published is necessarily identical to the stored web site. Therefore, it logically follows that not only are the templates from the Facilitator "the same" when used to create the store front, but similarly any published store front is "the same" as the final product hosted and published by the Facilitator.

Conclusion

16. The Examiner has pointed out particular references contained in the prior art of record, within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply.

Art Unit: 3629

Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 01/23/2009 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

Art Unit: 3629

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael M. Thompson whose telephone number is (571) 270-3605. The examiner can normally be reached on Monday thru Friday 8am-5:30 except Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/811,615
Art Unit: 3629

Page 17

/Michael M Thompson/
Examiner, Art Unit 3629

/JOHN G. WEISS/
Supervisory Patent Examiner, Art Unit 3629